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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 13

Application Number: 09/619,510

Filing Date: July 19, 2000

Appellant(s): BERG, GERT

MAILED

JAN 14 2003

GROUP 3600

Alex Sluzas
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/22/02.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is incorrect.

The amendment after final rejection filed on 6/4/02 has not been entered.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The appellant's statement in the brief that certain claims do not stand or fall together is not agreed with because the claims are not patentably distinct. Even though arguments are made with respect to each claim, they merely point out the further limitations of the one embodiment of the instant invention.

(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,358,291	Malmanger	10-1994
3,841,674	Bisbing et al.	10-1974
2,878,389	Raffman	3/1959

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-2 and 5-12 rejected under 35 U.S.C. 102. This rejection is set forth in prior Office Action, Paper No. 6.

Claims 1-2 and 5-7 are rejected under 35 U.S.C. 102. This rejection is set forth in prior Office Action, Paper No. 6.

Claim 3 is rejected under 35 U.S.C. 103. This rejection is set forth in prior Office Action, Paper No. 6.

(11) Response to Argument

Arguments with Regards to Malmanger

Applicant argues with regard to claim 1, that the examiner has ignored the applicants meaning by the use of the word actuator and thus misinterprets the instant claim. The examiner disagrees for several reasons. In the drawings, there are 3 distinct parts of the invention identified as the “actuator” 50 (The bottom section 70, the front wall 86, and pleat 84). As such the examiner has identified the element of Malmanger that is structurally equivalent to the general “actuator” of the instant invention. The applicant further argues that the actuator identified does not integrally contain an element that releasably engages the frame and the spring means. The spring means 114 and pawl

122 of Malmanger is part of the same element. Therefore, the examiner concludes they are integral. Furthermore, the pawl 60 and the spring means 100,110 of the instant invention are integral in *the same manner*. Therefore, the examiner contents if the elements of Malmanger are not considered integral, then the elements of the instant invention can not be considered integral either.

Applicant argues with regard to claim 2 that Malmanger does not teach the plate preventing inward travel of the door. Examiner contends that the plate 18 contacts the frame 19 and prevents movement of the door in the same manner as the plate 30 of the instant invention. Whether there is additional means (as identified by the applicant) to prevent this movement is irrelevant to the claim.

Applicant argues with regard to claim 5 that the pawl of Malmanger does not engage the underside of the frame. The examiner disagrees. The retaining groove 122 is under the body of the frame 19.

Applicant argues claim 6 merely based on its dependency of claim 5. Therefore, the examiner has no further arguments to make. The examiner would like to note that this appears to be further proof that the claims should stand or fall together contrary to the applicant's claim.

Applicant argues with regard to claim 7 that Malmanger does not disclose a rear section extending from the latch. By these arguments, the examiner concludes the applicant means that the rear section must be attached to the latch. The examiner disagrees with the interpretation that the term extends means that two elements must be attached. A box placed on a table extends upward from the table but is not attached to the table.

Applicant argues with regard to claim 8 that Malmanger does not disclose a continuously folded sheet. The examiner contends that Malmanger is made of a folded sheet in the same manner as the instant invention. Comparing Figure 5 of Malmanger with Figure 9 of the instant application, this becomes clear.

Applicant argues with regard to claim 9-11 that Malmanger does not disclose a forward pleat and a rear pleat. The examiner disagrees. As identified by the examiner in previous rejections, the forward pleat is defined by walls 107 and 108 and the rear pleat is defined by walls 110 and 114. The applicant has chosen to ignore this identification by the examiner and conclude there is no rear pleat. Applicant then further argues with regard to claim 10 that Malmanger does not disclose a rear pleat being flexible. The rear pleat as identified by the examiner includes the spring means 114 which by definition is flexible. Lastly, applicant argues with regard to claim 11 that Malmanger does not disclose a rear pleat so therefore the spring means can not comprise it. The Applicant has chosen to ignore the examiner's identification of a rear pleat which is composed of the spring means thus meeting the limitations.

Applicant argues claim 12 merely based on its dependency of claim 1. Therefore, the examiner has no further arguments to make. The examiner would like to note that this appears to be further proof that the claims should stand or fall together contrary to the applicant's claim.

Arguments with Regards to Bisbing

Applicant has argued that Bisbing et al does not disclose enough "discrete" elements to read on the claims. This is the basis for all the arguments with regard to Bisbing. The examiner disagrees. The "discrete" elements are all parts of a one piece latch. It seems inconsistent to the examiner that Bisbing can not anticipate based on the fact it is an integral unit wherein the applicant argues against Malmanger for not being integral.

Arguments with Regard to Malmanger in view of Raffman

Applicant argues that cam 87 of Raffman does not guide the latch but merely limits its movement. The examiner argues that the cam of Raffman meets the limitations of Claim 3 which state "camming means for controlling the travel of the actuator". The Examiner maintains that limiting the movement of the actuator is controlling the travel of the actuator. Applicant further argues that there is no motivation to combine because the addition of the cam 87 would provide "no function". The examiner disagrees. Even if the cam 87 of Raffman was directed applied (and not just its teaching which is the proper standard) it would prevent the latch system of Malmanger from motion that perpendicular to the intended motion (parallel to the door panel).

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Robert A Siconolfi
Examiner
Art Unit 3683

RS
January 11, 2003

Conferees
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 1/12/03
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